



POLICE DEPARTMENT CITY OF NEW YORK

February 1, 2017

MEMORANDUM FOR: Police Commissioner

Re: Detective Joseph Stynes
Tax Registry No. 919759
47 Detective Squad
Disciplinary Case No. 2013-9954

Charges and Specifications:

- I. Said Police Officer Joseph Stynes, on or about May 24, 2011, at approximately 2200 hours, while assigned to Bronx Anti-Crime and on duty, in the vicinity of East 165th Street and Teller Avenue, Bronx County, did intentionally use force without police necessity, in that Police Officer Stynes placed his foot on, and applied pressure to Person A's head, causing physical injury.

P.G. 203-11 USE OF FORCE

P.L. §120.00(1)

Appearances:

For CCRB-APU: Andre Applewhite, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For Respondent: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, NY 10279

Hearing Dates:

August 10 and November 3, 2016

Decision:

Not Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 10 and November 3, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. CCRB called Edwin Montano and Peter Hoy as witnesses¹. Respondent called Lieutenant Michael Raso as a witness and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in issue in this case. On May 24, 2011, at approximately 2200 hours, Person A and Person B were seated in the rear of a cab in the vicinity of 163rd Street and Teller Avenue, Bronx, New York. At about that time, the cab was pulled over by a black, unmarked police car which had activated its lights. The car stop took place approximately three blocks from Person A's residence. Three police officers², including Respondent, stepped out of the police car and approached the cab. Respondent approached the driver of the cab, while Lieutenant Michael Raso approached the passenger side. A third officer, Detective Morales, was also present during the car stop.

Detective Morales had a verbal exchange with Person A, the content of which are in dispute. Morales ordered Person A to step out of the vehicle. After Person A stepped out of the

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Messrs. Montano and Hoy were foundational witnesses whose testimony was not seriously disputed; accordingly, their testimony is not discussed in the body of this decision.

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Although neither Person A nor Person B named the police officers participating in the stop, the names of the police officers reflected in the decision and their respective alleged roles were not disputed by the parties.

vehicle, a verbal and physical confrontation between he and the three police officers ensued, the facts of which are in dispute. Person A was eventually placed under arrest and charged with felony possession of a controlled substance. Person B was not arrested and was permitted to leave in the cab.

Person A was transported to the 48th Precinct for arrest processing and transportation to Central Booking. Person A was arraigned in Bronx Criminal Court on a felony narcotics possession charge and was released. Immediately after his release, Person A presented himself at the Bronx County Criminal Defense office of the Legal Aid Society, where Investigator Edwin Montano took photographs of injuries Person A claimed he suffered during the car stop (CCRB Exhibits 3-A through 3-F).

At the time of his arrest, Person A was under the supervision of the New York State Division of Parole. The parties stipulated that Person A had previously been convicted of armed robbery, for which he served fifteen years in state prison. In addition, Person A was convicted of attempted murder and weapons possession in the same case.

On March 6, 2012, the charges against Person A were dismissed. Subsequent to his release, Pers. A filed a civil action against the City of New York based upon the circumstances of his arrest. On August 3, 2016, at approximately 0215 hours, Person A was the victim of a homicide at [REDACTED], Bronx, New York.

The following is a summary of the facts which are in dispute.

On June 20, 2011, Person A made two statements to CCRB (CCRB Exhibits 2-A, 2-B, 4-A, 4-B). Person A later made a third statement on April 26, 2012 (CCRB Exhibits 6-A, 6-B). Person A stated that after the cab had been stopped, he was told by Detective Morales to put his phone down. Person A replied that he was texting. Detective Morales reached into the cab.

swatted the phone from Person A's hand and told him to get out. Person A asked what was going on and was told that the police wanted to search for firearms. Person A stepped from the cab, denied having any firearms and stated that he was on his way to dinner with his girlfriend. Detective Morales asked him for identification, which he provided. Detective Morales passed the identification to Lieutenant Raso, who took the identification back to the police car, apparently to run a check. Lieutenant Raso returned thereafter and informed Detective Morales that Person A was on parole. Person A conceded being on parole but asked, "What does that mean? I've got a job. I pay taxes just like you" (CCRB Ex. 2-A, p. 4).

When Person A placed his hands on the trunk of the cab and bent over in a "frisk position," the officers "got aggressive." As Detective Morales kicked Person A's feet apart, he protested, saying, "I know my rights; what are you doing? You can't just be pulling people out of cabs like this. You don't have anything better to do than harass civilians?" According to Person A, Detective Morales replied, "You've got a real smart mouth," then slammed his head into the trunk of the cab, injuring the bridge of Person A's nose. Person A put up his hands to cover his face and Lieutenant Raso then punched Person A in his left eye. Person A dropped to the ground and had curled into a fetal position when the officers began kicking him. Respondent placed his foot on Person A's head, handcuffed him and took him to the police car. Person A stated that he was taken to the 48th Precinct, where he was beaten, then placed in a cell (CCRB Ex. 2-A, pp. 4-6, 18-19, 22-23, 27).

At approximately 0300 the next morning, Person A was approached in the cell by Detective Morales, who asked if he wanted to go home; Person A replied that he wanted to go to the hospital because he thought that the officers had broken his ribs. According to Person A, Detective Morales told him that he could either go home or go to the hospital but if he went to

the hospital, he would also be going to jail. Person A stated that he wanted to go to the hospital. Approximately 30 minutes later, the officers removed the handcuffs and gave Person A a property sheet. Person A stated that when he saw that he had been charged with possession of a controlled substance, he knew that the officers had fabricated criminal charges against him. Person A was taken to Saint Barnabas Hospital, where he was x-rayed, then taken to Central Booking and arraignments (CCRB Ex. 2-A, p. 7).

At Person A's arraignment on May 26th, he informed his assigned counsel what had transpired during his arrest and was advised to report to the Legal Aid office as soon as he was released so that his injuries could be documented. Person A met with Legal Aid Investigator Edwin Montano, who took photographs of Person A's face, head and eyes (CCRB Ex. 3-A through 3-F). Two days later, Person A sought treatment at [REDACTED] Hospital emergency room for pain in his ribs. Person A was advised that he had bruised ribs and was prescribed pain killers, as well as muscle relaxants. Person A sought treatment at [REDACTED] Hospital two days later for the same problem due to the pain in his ribs preventing him from sleeping at night (CCRB Ex. 2-A, p. 8-9).

Person B made three statements to CCRB which were admitted into evidence (CCRB Ex. 7-A, 7-D, 8-A, 8-B, 9-A, 9-B). On May 25, 2011, Person B made a telephone call to CCRB in which she reported being stopped by three police officers at approximately 2200 hours on May 24, 2011, in front of Junior High School 145, located at 165th Street and Teller Avenue (CCRB Ex. 7-A, p. 3). At the time of the stop, Person B was in a cab with her boyfriend, Person A (CCRB Ex. 7-A, p. 5). When the police stopped the cab, Person A was on his mobile phone. Detective Morales told Person A to "put [your] fucking phone down." After Person A put his phone down, he was ordered to step from the vehicle by Detective Morales, then was asked

whether he “had anything on him.” After Person A denied possessing anything, he was searched. According to Person B, Detective Morales attempted to go into Person A’s pants and search his buttocks area. Person A refused to permit the search, telling the police if they wanted to search in that manner, they would have to take him to the precinct and not conduct the search in the street. The police then threw Person A to the ground and Lieutenant Raso kicked him in his face. Detective Morales was trying to pull Person A’s pants down to search his buttocks area. They eventually did search Person A’s buttocks area. Respondent took Person B’s mobile phone from her and attempted to block her view of Person A with his body (CCRB Ex. 7-A, p. 6, 11-13).

Person B saw all three officers involved with Person A: Lieutenant Raso kicked him in his face; Respondent had his boot on Person A’s head; and Detective Morales was trying to pull down Person A’s pants and go inside his buttocks area (CCRB Ex. 7-A, p. 13).

On June 20, 2011, Person B made a second statement to CCRB in which she reiterated the factual assertions she made in her May 25th telephonic statement but added several new assertions. Person B added that Detective Morales told Person A, “Get the fuck off your phone,” and then smacked the phone from Person A’s hand. Person B also added an assertion that Detective Morales asked Person A for identification, then he handed it to Lieutenant Raso, who took it back to the police car. Person B stated that Person A had admitted to the police officers that he was on parole. Person B stated that she too had a mobile phone in her hand during the car stop which was knocked from her grasp by Respondent, who told her to “get the fuck off your phone.” Person B claimed to have heard Detective Morales say, “Shut the fuck up,” to Person A, then heard Person A’s head bang against the bumper of the cab. Person B also stated that she observed Lieutenant Raso punch Person A in the face. Finally, Person B asserted that

Respondent searched her pocketbook; forced her to lift her shirt; and searched her pants pockets (CCRB Ex. 8-A, pp. 6, 15).

In a third statement to CCRB on July 12, 2011, Person B corrected her June 20th statement to reflect that Person A's head was slammed against the trunk, as opposed to the rear bumper of the cab. Person B stated that when Person A was on the ground with Respondent's foot on his head, Person A was screaming for them to stop and was not moving.

Respondent testified that on May 24, 2011, he was on Bronx Anti-Crime duty with Lieutenant Raso and Detective Morales (T. 83). At approximately 2200 hours, the police officers were in the vicinity of 163rd Street and Teller Avenue. A taxi came down 163rd Street and made a left turn onto Teller Avenue at what Respondent believed was a high rate of speed, based upon the sound of "screeching" tires. Detective Morales told Respondent, who was driving, to stop the cab because it appeared the passenger was arguing with the driver of the cab. Respondent made a right turn onto Teller Avenue, activated the lights on his car and pulled the cab over (T. 84).

Respondent left his police car and approached the cab driver, while Lieutenant Raso and Detective Morales approached the passenger side of the cab. As Respondent questioned the cab driver, Detective Morales had Person A step out from the rear of the cab. Detective Morales took Person A to the trunk area of the cab and had him face the trunk. Respondent observed Person A spin around to face Detective Morales, who responded by grabbing Person A. Lieutenant Raso assisted Detective Morales with Person A while Respondent was still speaking with the cab driver and monitoring Person B (T. 87-88).

Respondent then noticed that Person A Lieutenant Raso and Detective Morales were on the ground behind the cab. Respondent waited approximately 30 seconds, then stepped to the

rear of the cab to assist bringing Person A under control. Respondent observed Person A on the ground with his right hand inside the rear of his pants while trying to roll over and sit up. At the same time, Lieutenant Raso and Detective Morales were attempting to roll Person A over and remove his hand from his pants. Respondent attempted to roll Person A from the right side of his body onto his stomach and struggled to do so for approximately 90 seconds, until the three officers were able to get Person A onto his stomach. Detective Morales, at some time during the struggle, declared, "It's not a gun, it's drugs" (T. 88-91).

Person A was eventually handcuffed but continued to attempt to roll onto his back. While Person A was attempting to roll over, he was face-down on the ground. Person A was placed in the police car and driven to the 48th Precinct (T. 91-93). Respondent allowed Lieutenant Raso and Detective Morales to bring Person A into the precinct and parked the police car. A few minutes later, Respondent entered a precinct bathroom and observed Person A pressing Lieutenant Raso against a gated window while struggling to prevent a search of his pants. Respondent assisted Lieutenant Raso and Detective Morales in bringing Person A to the ground, where Detective Morales eventually seized a plastic bag containing approximately 400 pills from Person A's pants (T. 95-97).

Respondent denied any knowledge that Person A was under parole supervision and further denied discussing his parole status with Person A during the car stop. Respondent further denied placing his foot on Person A's head and grinding his head into the pavement (T. 97-98).

Lieutenant Michael Raso testified that on May 24, 2011, he was assigned as a Bronx Anti-Crime Sergeant and was on duty in the 44th Precinct with Detective Morales and Respondent in an unmarked police vehicle (T. 114). Respondent was the driver, Detective Morales was seated in the front passenger seat and Lieutenant Raso was in the rear passenger

seat. At about 2200 hours, as his police car traveled westbound in the vicinity of 163rd Street, he observed a livery cab traveling toward him. The cab made a turn in front of his car at a high rate of speed which caused the tires to squeal. Detective Morales observed a passenger in the rear, who was leaning forward toward the driver, as if they were having some sort of altercation or exchange. Detective Morales suggested stopping the cab to ensure the driver's well-being and stopped the cab in the vicinity of 165th Street and Teller Avenue (T. 114-115).

The three officers stepped out of their police car and approached the cab. Lieutenant Raso approached the rear passenger door, Detective Morales the front passenger side and Respondent approached the driver's door. Lieutenant Raso shined his flashlight into the rear cabin of the cab and observed Person A look back towards him, then lean forward and place his arm behind his back. Detective Morales stood at the rear passenger door and asked Person A to step from the cab. Lieutenant Raso believed that Person A's arm motion suggested that he was hiding a weapon or contraband (T. 116).

Once Person A stepped from the cab, Detective Morales escorted him to the trunk area where he directed Person A to place his hands on the trunk. As Detective Morales began frisking Person A, Person A pushed off the trunk, then turned toward Morales and Raso. Detective Morales attempted to turn Person A back around to face the trunk and a struggle ensued where Raso and Morales became entangled with Person A on the ground. Person A fell face forward onto the ground and then attempted to roll onto his back while the police officers attempted to handcuff him. Person A was also attempting to push his hands into the rear of his pants (T. 118-120).

Respondent eventually joined Raso and Morales in the attempt to restrain Person A. Lieutenant Raso testified that Person A was pivoting off his face and head in an attempt to roll over because the officers were restraining his hands in an attempt to handcuff him. Lieutenant

Raso observed Person A's face come in contact with the street. While the struggle ensued, Detective Morales successfully frisked the rear of Person A's pants and declared, "It's not a gun; it's narcotics or drugs." While the officers were eventually able to handcuff Person A, he continued to thrash around. Person A was placed in the rear of the police vehicle where he continued to attempt to reach into the rear of his pants (T. 119-121).

Respondent drove Lieutenant Raso, Detective Morales and Person A to the 48th Precinct. When the police officers reached the precinct and attempted to bring Person A inside, he went limp and tried to throw himself on the ground. Detective Morales and Lieutenant Raso carried Person A into the precinct by his arms and legs (T. 121-122).

Once Lieutenant Raso and Detective Morales entered the precinct, they took Person A directly to a restroom with the intention of conducting a strip search. As they entered the rest room, Person A began struggling, causing Lieutenant Raso to collide with a gated rest room window. During this struggle, Respondent entered the rest room and assisted in subduing Person A, eventually placing him on the floor. Detective Morales pulled up Person A's sweatpants and seized a plastic bag containing approximately 400 OxyContin pills (T. 123-124).

On cross-examination, Lieutenant Raso stated that Person A never had a mobile phone in his hand during the car stop; that he was never asked to produce identification; and that none of the police officers ran a check on Person A's identity (T. 127-128). Lieutenant Raso stated further that Respondent never stepped on Person A's head; that neither he nor any other member of his team punched or kicked Person A; and that he only observed a small laceration on Person A's head after he was arrested (T. 132-134). Lieutenant Raso conceded that Person A was complaining of rib pain, so he requested that an ambulance respond to the precinct (T. 134).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. In a hearsay case of this nature, particular attention must be paid to the evidence. This tribunal has held many times that while hearsay is admissible in administrative proceedings, and may be the sole basis for a finding of fact, it must be carefully evaluated before it is relied upon. The more important the evidence is to the case, the more critically it should be assessed (*Police Department v. Acosta*, OATH Index No. 464/00 [Jan. 7, 2000]). Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v. Suardy*, 202 A.D.2d 297 [1st Dep't 1994]).

In this case, the evidence in support of the single charge against Respondent comes from the hearsay statements of Person A and Person B, who were involved with each other in a relationship, raising the issue of bias. Person A was a convicted felon who brought a lawsuit against the City of New York, raising significant credibility issues. Person A would also have a strong incentive to shade the facts of the encounter to avoid violating parole and being returned to state prison. In addition, as a person who faced a possible felony charge for possession of a substantial amount of drugs, he might have had an incentive to resist arrest.

Person B's statements, when considered in the aggregate, set forth a developing narrative of increasingly unprofessional conduct without an adequate rationale for the timing of the new disclosures. For instance, Person B asserted in her second CCRB statement that she, too, had been searched without justification during the car stop. As a person personally aggrieved by Respondent's allegedly unprofessional behavior, Person B had at least as much incentive to disclose this aspect of his conduct during her first statement as she would have to complain of the treatment Person A suffered, yet she did not raise the allegation until almost one month later.

It is noteworthy that the date of Person B's second statement, June 20, 2011, coincides with the date of Person A's first statement to CCRB. As discussed above, Person A had been released from custody on May 26, 2011 and would have been able to communicate with Person B prior to both statements being made on June 20th. Without benefit of cross-examination, these probative factors concerning motive and bias could not be adequately addressed.

CCRB Exhibits 3-A through 3-F clearly depict certain injuries to Person A's eye and scalp. While the photographs provide limited support for Person A's allegations, the only evidence attributing causation comes from Person A's and Person B's out-of-court statements. Given the record as a whole, I find Person A's and Person B's statements too burdened with self-interest to be relied upon without being subjected to cross-examination.

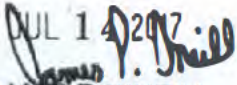
In contrast, Respondent's and Lieutenant Raso's testimony appeared to be forthcoming and plausible. Although Respondent also has an interest in the outcome of this proceeding, his testimony, and that of his witness, did not have the additional negative credibility factors present in Person A's statements. Thus, I find that CCRB has failed to meet its burden of proof of establishing by a preponderance of the credible, relevant evidence that Respondent engaged in the charged misconduct. Accordingly, I find him Not Guilty.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

JUL 14 2017

JAMES P. O'NEILL
POLICE COMMISSIONER